

Claimant filed this appeal and contends the Judge erred by failing to increase the permanent partial general disability to 9 percent. Claimant argues that she now has symptoms in her back, buttocks, and right leg. Conversely, respondent and its insurance

carrier contend that claimant's impairment has not changed. They want the Appeals Board to affirm the Judge's decision.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Board finds:

1. On June 30, 1993, Ms. Roebuck injured her right hip when she was thrown from a three-wheel bicycle. The accident arose out of and in the course of her employment with Boeing.
2. By an agreed award filed with the Division on February 9, 1995, Ms. Roebuck was awarded a 3 percent permanent partial general disability for her hip injury.
3. After recovering from the June 1993 accident, Ms. Roebuck eventually returned to work for Boeing without restrictions. She returned to the same job and same duties as a mill and lathe operator.
4. About the end of October or early November 1997, Ms. Roebuck noticed additional symptoms in her right hip and leg. At the January 1998 preliminary hearing, she testified that the symptoms that she was then experiencing were located in the same part of her body that she had injured in the 1993 accident.
5. Boeing presented the testimony of board certified orthopedic surgeon Dr. Anthony G. A. Pollock. He first saw Ms. Roebuck for the hip injury in December 1993 when her treating physician, Dr. Paul D. Lesko, left town. After seeing Ms. Roebuck on that one occasion, Dr. Pollock released her to return to work without restrictions.
6. In early 1995 the parties settled this claim with a running award. The parties attached two medical reports to the agreed award filed with the Division. The first report, a December 29, 1994 letter from Dr. Lesko, stated that Ms. Roebuck had a 4-5 percent rating for the hip which converted to a 2 percent whole body functional impairment. The second report, a May 12, 1994 letter from Dr. Lawrence Blaty, stated that Ms. Roebuck had a 9 percent impairment to the hip which converted to a 4 percent whole body functional impairment. As indicated above, the parties settled the claim for a 3 percent permanent partial general disability.
7. In January 1998, Ms. Roebuck had a post-award preliminary hearing to request additional medical treatment. The Judge ordered Boeing and its insurance carrier to provide the names of three doctors from which Ms. Roebuck could select a treating physician.
8. At Boeing's request, Dr. Pollock saw Ms. Roebuck again in March 1998. Because Ms. Roebuck was complaining of pain radiating down her leg to her foot, the doctor ordered EMG studies and an MRI. The EMG study was normal and the MRI showed no change from one done in 1996, which also revealed degenerative disc disease and minimal disc

bulging between the fourth and fifth lumbar vertebrae and between the fifth lumbar and first sacral vertebrae.

9. On August 6, 1998, alleging that her injuries had progressed and her impairment had increased, Ms. Roebuck filed a request for the Division to review and modify the initial award.

10. Dr. Pollock testified that he did not believe Ms. Roebuck had a permanent functional impairment when he saw her in December 1993 and he does not believe that she has one now. Therefore, he testified that Ms. Roebuck's present impairment is no higher than the 3 percent initially awarded. But when asked if he believed Ms. Roebuck had a lumbosacral strain, Dr. Pollock said that maybe she does.

Q. (By Mr. Burkholder) And did I apprise you at that time that he [Dr. Murati] had seen fit to give Ms. Roebuck a permanent impairment rating based upon lumbosacral strain with possible radiculopathy secondary to the trochanteric bursitis?

A. (By Dr. Pollock) Yes.

Q. Would you agree with that diagnosis based on your evaluation of this patient in 1998, Doctor?

A. Oh, I mean, I'm not quite sure how you -- where her lumbosacral sacroiliac joint strain comes from in relation to a trochanteric bursitis unless it's related to some type of inability to walk or gait anomaly. But in view of the normal MRI, I don't know what to tell you. But I suppose, you know, in the absence of anything else giving her the benefit of doubt that her back is apparently painful and her complaints of leg pain may be genuine, I suppose it's fair. It's okay. Yes, I'll accept it. Not an unreasonable approach.

Q. Okay. When you examined the patient, did you find that she had a lumbosacral strain?

A. I couldn't find anything that was typical of either lumbosacral spine disease nor typical of hip disease nor typical of bursitis the last time I saw her.

...

Q. Based on your evaluation of the patient then in 1998, do you have an opinion within a reasonable degree of medical probability whether this patient has a lumbosacral strain?

A. Okay. I suppose it's possible.

Q. Do you have an opinion whether the patient has any permanent impairment of function as a result of any lumbosacral strain that she may have?

A. I really don't know. I mean, it's very difficult to evaluate people who have this desiccated disc disease because we really don't know what it means. It means they've got a dried-out disc. But it's actually impossible to know what the cause of that is or what direction that pathology will go in. It's completely unpredictable. And I don't know that a strain would necessarily cause degenerative disc disease.

Q. Okay.

A. But I suppose, you know, in the absence -- I suppose I have to say that, you know, maybe she's got a strain, but I don't think she has any impairment because of that.

12. Ms. Roebuck presented the testimony of Pedro Murati, M.D., who is board certified in physical medicine and rehabilitation. At her attorney's request, Dr. Murati examined Ms. Roebuck in June 1998. She reported to Dr. Murati that she now experienced pain and tingling from her low back running down her right leg. Dr. Murati testified that Ms. Roebuck's condition has worsened as she now has snapping hip syndrome with chronic trochanteric bursitis on the right and lumbosacral strain with possible radiculopathy secondary to the hip condition. He recommends medication, a CT scan, and myelogram.

13. Dr. Murati believes that Ms. Roebuck has a 1 percent whole body functional impairment for loss of the lumbar range of motion and a 5 percent whole body functional impairment for lumbosacral strain, which combine and convert to a 6 percent functional impairment to the body as a whole. Also, he believes that the functional impairment for the hip has not changed from the 3 percent that the parties used in the initial award. In rating Ms. Roebuck, the doctor used the fourth edition of the AMA Guides to the Evaluation of Permanent Impairment.

14. Dr. Murati reviewed the EMG study that Dr. Pollock ordered. According to Dr. Murati, the EMG was incomplete in several important areas.

15. Considering the opinions of both Dr. Pollock and Dr. Murati, the Appeals Board finds that Ms. Roebuck's injuries have worsened and she now has an additional 3 percent whole body functional impairment for a lumbosacral strain. Therefore, Ms. Roebuck's whole body functional impairment has increased to 6 percent.

#### **CONCLUSIONS OF LAW**

1. The initial award should be modified to increase Ms. Roebuck's permanent partial general disability from 3 percent to 6 percent.

2. Because the record does not establish the exact date that the increased impairment became permanent, the Board selects the date that Dr. Murati examined Ms. Roebuck, June 25, 1998, for the effective date of the modification.<sup>1</sup>

**AWARD**

**WHEREFORE**, the Appeals Board modifies the initial award entered in this proceeding and, effective June 25, 1998, increases Ms. Roebuck's permanent partial general disability from 3% to 6%.

Cathy M. Roebuck is granted compensation from The Boeing Company and its insurance carrier, Aetna Casualty & Surety Company, for a June 30, 1993 accident. Based upon a \$1,041.58 average weekly wage, she is entitled to receive \$299 per week for 6.57 weeks of temporary total disability. For the period before June 25, 1998, she is awarded 253.57 weeks of permanent partial disability benefits at \$20.83 per week, or \$5,281.86, for a 3% permanent partial general disability. Thereafter she is entitled to 154.86 weeks of permanent partial disability benefits for a 6% permanent partial general disability in the amount of \$6,453.02 making a total award of \$13,699.31. As of April 30, 1999, Ms. Roebuck is owed \$9,085.60, less amounts previously paid. The balance of \$4,613.71 is to be paid at the rate of \$41.67 per week until paid in full.

The Appeals Board adopts the remaining orders set forth in the award to the extent they are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: David H. Farris, Wichita, KS  
Vaughn Burkholder, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup> See K.S.A. 44-528.